Remarks

Claims 1-20 are pending.

Rejection of Claims under 35 U.S.C. § 102/103

Claims 1, 2, 4, 5, 8-12, and 15-20 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Kenner et al., U.S. Patent No. 6,003,030 (Kenner). Claim 3 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Kenner. Claims 6 and 13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kenner in view of Biber et al., U.S. Patent No. 4,951,278 (Biber). Claims 7 and 14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kenner in view of Haeri et al., U.S. Patent No. 6,385,615 (Haeri). The applicants respectfully traverse these rejections.

Kenner, Biber, and Haeri taken alone or in combination neither teach nor suggest a network verification tool (NVT) apparatus including:

> a network under test;
>
> at least one probe network device coupled to the network under test, the at least one probe network device hosting at least one task type; and
>
> an NVT server coupled to the at least one probe network device, wherein the NVT apparatus allows a user to create at least one task for the at least one task type by entering parameters into a template for each of the at least one task, the NVT server is capable of transmitting the at least one task to the at least one probe network device hosting the task type, and the at least one probe network device is capable of executing a process corresponding to the at least one task,

as required by independent claim 1, and generally required by independent claims 9, 17, and 19.

Regarding the claimed "at least one probe network device coupled to the network under test, the at least one probe network device hosting at least one task type," the Examiner states:

> . . . a plurality of delivery site (26, 28, 30), content providers (22, 24) under test; user terminal 12, 16, 20. (each delivery site or content provider or user terminal reads on a probe network); (Office Action of February 25, 2004, p. 2, no. 1.)

As noted in their Response of December 1, 2003, the applicants respectfully submit that neither Kenner's deliver sites nor his content providers host "at least one task type" within the meaning of the claim. The Examiner points out no task from Kenner that is hosted by or executed on the delivery sites (**26**, **28**, and **30**) and content providers (**22** and **24**). Moreover, the Examiner makes no response to similar arguments previously presented by the applicants.

Instead, the Examiner has added that Kenner's user terminal (**12**, **16**, **20**) is yet another device (along with the delivery sites and the content providers) that teaches the claimed at least one probe network device. The applicants respectfully disagree. The applicants respectfully submit that the Examiner has identified nothing about Kenner's user terminal **12** that teaches or suggests that it hosts "at least one task type." As for the claimed feature that the "at least one probe network device is capable of executing a process corresponding to the at least one task," the Examiner states:

> . . . the configuration is run on the user terminal, see column 7, lines 56-67 and column 8, lines 1-12, and a preferred site is selected for delivery to the user, see column 7 lines 17-49. (Office Action of February 25, 2004, p. 3, ¶ 2.)

The cited portion of Kenner states (in relevant part):

> In the system, a mirror service provider (MSP) **32** is connected to the Internet **10**. The MSP **32**, which exercises a management function over the distribution of delivery sites **26**, **28**, and **30**, and over the allocation of requests to the original and delivery sites from user terminals **12**, **16**, and **20**, includes a database capable of transmitting and receiving data over the Internet **10**.
>
> This management function is facilitated by the use of a configuration utility **34** and a client program **36** run within a storage medium (i.e. random access memory) on the user terminal **12**. Although the configuration utility **34** and the client program **36** are shown in FIG. 1 as a part of only the first user terminal **12**, it should be recognized that any user terminal, such as terminals **16** and **20**, participating in the system will use such software. A user desiring to participate in the system can obtain the software comprising the configuration utility **34** and client program **36** directly from the MSP **32**, or through traditional retail or other channels (such as being part of the browser or operating system of the computer). It should be noted that the functions performed by the configuration utility **34** in the described embodiment of the invention can be integrated into

> general Internet application software, such as a browser or other network application; a stand-alone program is not necessary.

Thus, it appears to be the Examiner's position that Kenner's configuration utility **34** teaches the applicants' claimed process corresponding to the at least one task. The applicants respectfully disagree. While it may be true that configuration utility **34** is a process (and the applicants do not concede this point), nothing in the cited portions of Kenner teaches or suggests that configuration utility **34** corresponds to anything like "the at least one task" as set out in claim 1. Moreover, as will be seen below, this line of argument by the Examiner is inconsistent with other arguments presented by the Examiner.

Regarding the claimed NVT server, the Examiner suggests that Kenner's ISP **14** teaches the claim limitation. Office Action of February 25, 2004, p. 2, bottom. The applicants respectfully disagree. Kenner clearly states that ISP **14** is simply an Internet service provider, i.e., a business or organization that provides access to the Internet. Thus, an ISP is clearly not a network verification tool (NVT) as described and claimed by the applicants.

Moreover, regarding the claimed "wherein . . . the NVT server is capable of transmitting the at least one task to the at least one probe network device hosting the task type," the Examiner continues to state:

> - the configuration file is downloaded from the MSP (mirror service provider) [through] the ISP (server) to the user terminal 12 . . . [c]orresponding to claimed NVT server is capable of transmitting the at least one task to the at least one probe network device hosting the task type; and the at least one probe network device is capable of executing a process corresponding to the at least one task)." (Office Action of February 25, 2004, p. 3, ¶3).

The applicants continue to respectfully disagree. Here the Examiner argues that Kenner's configuration file teaches the claimed "at least one task." The applicants respectfully submit that a configuration file is not "at least one task" within the meaning of the term as used by the applicants. Thus, regardless of whether Kenner's configuration utility **34** "corresponds" to a configuration file (and the applicants do not concede this point), Kenner does not teach or suggest the claim limitation.

Regarding the claimed "NVT apparatus allows a user to create at least one task for the at least one task type by entering parameters into a template for each of the at least one task," the Examiner continues to refer to Kenner's configuration utility **34** and column 9, lines 36-45 which state:

> The configuration utility **34** then queries the user (step **42**) for various items of information needed in the configuration process, for example, the user's name, e-mail address, password, modem speed, and information related to access control (e.g. what levels of various attributes are viewable by the user). The access control mechanism will be discussed in further detail below. In one embodiment of the invention, the information received from the user is encrypted and stored in a configuration file on the user terminal **12**.

Nothing in the cited portion of Kenner teaches or suggests that a user can create *at least one task for the at least one task type* by entering parameters into a *template* for each of the at least one task. First, Kenner makes no mention of the use of a template for entering his "items of information needed in the configuration process". Second, that information is not used to create "at least one task for the at least one task type" such that the claimed at least one probe network device is capable of executing a process corresponding to the at least one task. Kenner's configuration utility **34** gathers and/or stores configuration information and executes tests sent to it by the mirror service provider (MSP) **32**. Kenner makes clear that any tests specified by MSP **32** come from MSP **32** in the form of a delivery site file (see, e.g., column 8, lines 18-26), and that the tests are not created by configuration utility **34**. Similar arguments were presented by the applicants in their Response of December 1, 2003. However, the Examiner has not responded to the arguments.

Additionally regarding independent claim 9, Kenner neither teaches nor suggests "converting the at least one task for transmission to the at least one probe network device," and the Examiner points to nothing in Kenner as teaching or suggesting this limitation. The applicants note that a similar argument was presented in their Response of December 1, 2003. However, the Examiner's Office Action of February 25, 2004 fails to respond to this argument.

Additionally regarding independent claim 17, the applicants respectfully submit that Kenner neither teaches nor suggests "interpreting the task parameters to form task

code that can be transmitted to at least one probe network device that hosts the task code." Regarding this limitation, the Examiner states:

> . . . transmitting the site file in accordance with user information to limit entries into the site file so that optimum test can be run for a specified user (client), see column 8, lines 13-39. (Office Action of February 25, 2004, p. 5, ¶ 2.

The cited portion of Kenner states:

> In a preferred embodiment, the configuration utility **34** must be run by the user, either by command or automatically, before the user terminal **12** will have access to the system. The operation of the configuration utility **34** is shown in detail in FIG. 2.
>
> The configuration utility 34, when first run on the user terminal **12**, retrieves a delivery site file (step **40**) from the MSP **32** (FIG. 1). If the user already has a delivery site file (e.g., it was received with the configuration utility **34**), and that delivery site file is sufficiently new, the delivery site file can be retrieved from the local hard disk of the user terminal **12**. *This delivery site file contains a list of all available delivery sites (such as delivery sites **26, 28, and 30**) and a list of network tests to be run at the user terminal **12**.* In the context of the invention, there can be as few as two delivery sites, or if the number of users justifies it, as many as several thousand. The number of sites in principal is unlimited, with each available delivery site represented in the delivery site file.
>
> The delivery site file is generated by the database from within the MSP's computer system. The database application uses information about the user to dynamically determine the optimum tests to run. Consequently, the delivery site file need not contain entries for every delivery site in existence; the list can be tailored to include only those sites which appear appropriate or feasible. (Emphasis added)

Kenner's site file is merely a list of all available delivery sites and a list of network tests to be run at the user terminal **12** which is generated by a database. Thus, Kenner's site file neither teaches nor suggests the claimed "task parameters" or "task code." Moreover, nothing in the cited portion of Kenner teaches or suggests *interpreting* task parameters to form task code.

Additionally regarding independent claim 19, Kenner neither teaches nor suggests "translating the tasks to task code," and the Examiner points to nothing in Kenner as teaching or suggesting this limitation. Again, the applicants note that a similar argument

was presented in their Response of December 1, 2003. However, the Examiner's Office Action of February 25, 2004 fails to respond to this argument.

Accordingly, independent claims 1, 9, 17, and 19 are allowable over Kenner, Biber, and Haeri taken alone or in combination. Claims 2-8 depend from claim 1 and are allowable for at least this reason. Claims 10-16 depend from claim 9 and are allowable for at least this reason. Claim 18 depends from claim 17 and is allowable for at least this reason. Claim 20 depends from claim 19 and is allowable for at least this reason.

In view of the amendments and remarks set forth herein, the application is believed to be in condition for allowance and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the examiner is requested to telephone the undersigned.

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Mail Stop: Non-Fee Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA, 22313-1450, on 5/3/04, 2004.

Attorney for Applicant(s) — Date of Signature: 5/3/04

Respectfully submitted,

Marc R. Ascolese
Attorney for Applicant(s)
Reg. No. 42,268
512-439-5085
512-439-5099 (fax)